

**AGREEMENT FOR PROVIDING  
EMERGENCY SERVICES**

**STATE OF TEXAS** §

**COUNTY OF LLANO** §

This **AGREEMENT FOR PROVIDING EMERGENCY SERVICES** (“Agreement”), effective as of October 1, 2023, by and between **LLANO COUNTY EMERGENCY SERVICES DISTRICT NO. 5** (“District”), a political subdivision of the State of Texas organized and operating pursuant to the provisions of Section 48-e, Article III of the Texas Constitution and Chapter 775 of the Health and Safety Code, as amended (“H&S Code”), and the **SUNRISE BEACH VOLUNTEER FIRE DEPARTMENT** (“Department”), a Texas non-profit corporation duly organized and operating under the laws of the State of Texas.

**WITNESSETH**

**WHEREAS**, District is a duly organized emergency services district, and a political subdivision of the State of Texas, created to protect life and health, and for such other purposes as determined by the District under Chapter 775 of the H&S Code, with full authority to carry out the objects of its creation; and

**WHEREAS**, pursuant to Section 775.031 of the H&S Code, District has the authority to enter into such necessary contracts with others, including incorporated cities or towns or other government entities, and volunteer fire organizations, whereby fire protection services, first responder and other services may be made available to the District as the District shall determine; and

**WHEREAS**, the District desires to institute fire protection, suppression, first responder and safety education services (“Emergency Services,” defined below) for the geographic area of the District that is served by Department (“Service Area,” defined below); and

**WHEREAS**, the District issued a Request for Proposals seeking one or more qualified responding departments to provide Emergency Services to the Service Area; and

**WHEREAS**, the District has determined that it is in the best interests of the residents and the property owners of the District to both enter into an agreement for Emergency Services with an independent department capable of providing Emergency Services at levels acceptable to the District and to acquire and assume responsibility for assets necessary to provide such services; and

**WHEREAS**, the Department currently owns, or through the District, has access to, real and personal property and equipment (together, “Equipment,” hereinafter defined) and has the requisite personnel (paid and/or volunteer) to provide the Emergency Services and is willing and able to provide to the District such Emergency Services to the Service Area for the consideration hereinafter provided; and

**WHEREAS**, understanding that the District is a new governmental entity and the parties have not worked together previously, the District and the Department agree to work together to best serve the District’s residents and visitors through this Agreement;

**NOW, THEREFORE**, for and in consideration of the premises and mutual covenants hereinafter contained, the Parties agree as follows:

**ARTICLE I.**  
**DEFINITIONS**

**Section 1.01** Definitions

In addition to other terms defined herein, the following terms shall have the meanings assigned to them in this Article I whenever they are used in this Agreement.

A. Act. Chapter 775 of the Health and Safety Code, as amended, and also referred to herein as the “H&S Code”.

B. Agreement. This Agreement and any and all amendments, exhibits, and supplements hereto.

C. Apparatus. A firefighting engine, ladder truck, brush truck, command vehicle, or other Departmental response vehicle.

D. Board. The Board of Commissioners for the District.

E. Chief. Employed by/volunteer of the Department to provide the oversight of operations and management of the Department.

F. Department. Sunrise Beach Volunteer Fire Department, a non-profit corporation duly organized and existing under the laws of the State of Texas.

G. Department Board of Directors. A minimum of three individuals serving in three separate and distinct officer positions to ensure appropriate controls at the Department.

H. District. Llano County Emergency Services District No. 5, a political subdivision of the State of Texas created and operating pursuant to the H&S Code.

I. DSHS. Texas Department of State Health Services.

J. Emergency Services. All fire protection and suppression services, rescue, and other services to be made available to the District pursuant to this Agreement. Emergency Services include:

1. firefighting practices, including structural and wildland firefighting, to protect people and property;
2. First Responder Organization services;

3. fire prevention education and public outreach;
4. identification and control of hazardous materials;
5. rescue from motor vehicle accidents, technical rescue and other rescue operations; and
6. other services, as may be mutually agreed upon in writing by the District and Department.

K. Equipment. The buildings, facilities, real property, personal property and firefighting equipment and Apparatus operated and utilized by the Department in providing Emergency Services. The Equipment may be owned by either Party.

L. First Responder Organization (“FRO”). As defined in 25 TAC §157.14, an FRO is a group or association of certified emergency medical services personnel that works in cooperation with a licensed emergency medical services provider to:

1. routinely respond to medical emergency situations;
2. utilize personnel who are emergency medical services certified by DSHS; and
3. provide on-scene patient care to the ill and injured and does not transport patients.

M. Operating Budget. The portion of the Department’s final budget approved by the District in accordance with Section 5.01, below, related solely to operating and payroll expenses and approved for funding by the District.

N. Party/Parties. “Parties” refers to the District and Department collectively. “Party” refers to either District or Department.

O. Service Area. The portion of the North and the entire South geographic area of the District to be served by the Department, as more particularly described in Exhibit “A”, attached hereto and incorporated herein for all purposes, which the Department will serve as the primary responder for Emergency Services.

P. SFFMA. State Firefighters’ and Fire Marshals’ Association of Texas.

Q. SOP/SOG. Standard Operating Procedures and Standard Operating Guidelines. The written operating procedures and written operating guidelines of the Department. The Department maintains both SOPs and SOGs.

R. State Certification. The training certifications offered by SFFMA (for volunteer firefighters), TCFP (for professional firefighters), and/or DSHS (for FRO members).

S. TAC. Texas Administrative Code. For references to an FRO in this Agreement, Title 25, Chapter 157 of the TAC is the most applicable chapter, but other chapters may be applicable. For references to fire protection in this Agreement, Title 37, Chapter 495 is applicable to this Agreement, but other chapters may be applicable as well.

T. TCFP. Texas Commission on Fire Protection.

**Section 1.02** Construction of Terms

In this Agreement, words of the singular number shall be considered to include the plural, words of the plural shall be considered to include the singular, and words of the masculine, feminine, and neuter genders shall be considered to include the other genders.

**ARTICLE II.**  
**REPRESENTATIONS AND WARRANTIES**

**Section 2.01** District's Representations, Warranties, and Findings. The District represents, warrants, and finds that:

A. The District is a duly constituted political subdivision of the State of Texas created and operating pursuant to the H&S Code, and has the authority to enter into this Agreement and the transactions contemplated hereby, and to carry out its obligations.

B. The services to be provided by the Department under this Agreement include providing Emergency Services to the Service Area. This Agreement also recognizes the ability to provide and receive mutual aid and automatic aid from other emergency service organizations as deemed necessary by the Department.

**Section 2.02** Department's Representations and Warranties

A. The Department is a non-profit corporation duly incorporated and validly existing and in a good standing under the laws of the State of Texas, maintains current licensing for an FRO. The Department is currently revising the provisions of its Articles of Incorporation in order to serve the District. The Department is not in violation of its By-laws or any laws of the State of Texas relevant to the transactions contemplated by this Agreement.

B. The Department has full corporate power and authority to execute and deliver this Agreement, and has, by proper corporate action, duly authorized the execution and delivery of this Agreement.

C. Neither the execution or delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms or conditions of this Agreement conflicts with or results in a breach of the terms, conditions, or provisions of any corporate restriction or any agreement or instrument to which the Department is now a party or by which it is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any prohibited lien, charge or encumbrance whatsoever on any property or assets of the Department.

D. The Department is knowledgeable of the boundaries of the Service Area and agrees to provide Emergency Services to all the residents, commercial interests, and others found within the Service Area.

E. The quality of the Emergency Services to be provided to the residents, commercial interests, and others found within the Service Area will be better than the quality of the Emergency Services received in the Service Area before the effective date of this Agreement or as evaluated jointly between the Department and the District.

F. The training of the Department's personnel shall exceed that of the prior year's level, as jointly determined between the Department and the District.

### **ARTICLE III. SERVICES TO BE PROVIDED**

#### **Section 3.01 General**

A. During the term of this Agreement, the Department shall provide Emergency Services to the Service Area on a 24-hour per day basis, seven days per week. The Department will transition to a hybrid (part paid/part volunteer) department within the first six months of this Agreement, utilizing firefighter/EMTs as paid staff to provide Emergency Services along with Department volunteers.

B. Response time is calculated as the time between receipt of the call from the dispatcher, or primary service answering point, and arrival of Department's first Apparatus on scene. The Department shall respond to each incident dispatched. Response times shall reflect times and personnel in accordance with applicable rules and regulations adopted by the District, including the National Fire Protection Association ("NFPA") Standards that may be adopted by the District.

C. Until NFPA Standards are adopted by the District, the following response time guidelines apply. The average response time on scene within the designated service area shall be within twelve (12) minutes 90% of the time. The average response time is calculated over a one-month period by dividing the sum of the individual response times by total number of response calls. Abnormal circumstances may alter response times. Abnormal circumstances include, but are not limited to, acts of nature, unusual road or other conditions, or calls where incident location is not clearly identifiable.

#### **Section 3.02 Duties and Responsibilities of Department.**

A. The Department Board of Directors shall be responsible for the overall administration of the Department.

B. The Department's Chief, or the Chief's designee, shall be in command of Emergency Services, the liaison with the Board for Department operational matters, and shall report directly to the Department Board of Directors.

C. The Chief, or the Chief's designee, shall attend each of the District's regular monthly meetings and be prepared and authorized to answer questions from the Board regarding the Department's reports, activities and finances.

D. The Department's personnel shall assume incident command in accordance with the National Incident Management System ("NIMS") Incident Command System ("ICS") processes and documentation for all Emergency Services within the Service Area.

E. The Department will maintain written SOP/SOGs and will provide an initial copy of the SOP/SOGs to the District by December 31, 2023. Thereafter, the Department shall provide the District with any updates or amendments to the SOP/SOGs as the updates or amendments are approved by the Department.

F. In the Department's monthly report, the Chief shall notify the Board when the Department responds to mutual or automatic aid outside of the Service Area. This notification shall also be part of the Department's monthly report to the District.

G. The Department shall provide to the District a roster of all the Department's personnel, noting thereon the respective State Certifications held by the personnel.

H. The Department shall utilize appropriate background checks and engage only responsible, competent, and well-trained personnel (volunteer or paid) and conduct both regularly scheduled in-person drills and training sessions and on-line training sessions to ensure a high level of competency among its personnel. The Department personnel shall be trained and maintain membership in accordance with the minimum standards of the SFFMA unless the TCFP or other licensing and regulatory agencies have jurisdiction. Apparatus drivers shall hold the appropriate driver's license for the Apparatus driven.

I. The Department will staff and maintain a DSHS licensed and approved FRO. The FRO will operate under the protocols and procedures established by the designated and contracted Llano County EMS Transport Provider ("EMS Transport Provider") and shall meet all the training, credentialing, and reporting requirements by the EMS Transport Provider.

J. The Department shall maintain a training certification program designed toward achieving TCFP requirements as well as the current Community Risk Assessment requirements for fire protection within the District. Training of Department members will be at an approved or qualified school or with documented Department training curricula. The Department is encouraged to utilize NFPA Fire Fighter 1 and Fire Fighter 2 standards in training.

K. The Department shall provide a sufficient number of uniformed and identified personnel such that the volunteer members and paid personnel, collectively, may adequately provide Emergency Services to the Service Area on an on-call, 24-hour-per-day basis. The Department shall notify the Board in writing within 24 hours of an occurrence when the number of personnel in the Department declines by more than 20% from the number identified as of the effective date of this Agreement.

L. Department personnel responding to an emergency medical/FRO call shall carry a photo identifying name tag, issued by the Department or the EMS Transport Provider, with the responder's name, level of certification, and the District's name.

M. Before hiring additional staff, the Department shall consult with and obtain Board approval if such hiring will require District budget amendments.

N. The Department shall, at all times, conduct its activities in accordance with the H&S Code, TAC, and all current statutes, rules and regulations of any and all governmental bodies, and shall further obtain and maintain all permits, consents and certificates that are required by any governmental body for the provision of the Emergency Services by the Department. In the event the Department becomes noncompliant with any such statutes, rules and regulations of any governmental body, the Department shall notify the Board within 24 hours of the date the Department receives official notice of such non-compliance. Any non-compliance issues, as outlined in this subsection, shall be addressed immediately by the Department and shall be presented at the next District Board meeting.

O. The Department shall maintain any and all Equipment in a condition of readiness and good repair at all times and shall comply, so far as practicable, with applicable sections of the NFPA codes and standards, manufacturer recommendations, and any other federal, state, or local codes and standards. To assure readiness of Equipment, the Chief, or the Chief's designated representative, shall notify the District of any out-of-service Equipment that affects or may affect response capability within 24 hours of the Department designating the Equipment out-of-service. Depending on the nature of the problem and need for the Equipment, to the greatest extent practicable, the Department will repair any out-of-service Equipment and follow an "Out of Service" policy found in the SOP/SOGs.

P. The Department shall make recommendations to the Board for future acquisition of Equipment during the District's annual budget process, which begins June 1, and as part of the 1-3-5-Year Plan described in Section 3.06, below.

Q. The Department shall implement and maintain an employee/volunteer handbook, staff evaluations and policies toward the goal of satisfying the requirements in this Agreement. The employee handbook, staff evaluations and policies shall address discrimination, sexual harassment, and Chain of Command.

R. The Department agrees to collaborate with the District regarding the Emergency Services contemplated under this Agreement to achieve the greatest efficiencies and to encourage dialogue between the District and the Department.

### **Section 3.03 Non-Exclusive Agreement**

The Department hereby acknowledges and agrees that its primary responsibilities are to the Service Area. However, to ensure there will be Equipment and personnel available at all times, the Parties acknowledge that the Department will, through the Chief, summon mutual and automatic aid from others and respond to mutual and automatic aid requests from others, including incorporated cities, towns or other governmental entities, or volunteer or paid fire and FROs, that are able to provide and/or assist in providing the Emergency Services in the Service Area. Except

if otherwise prohibited by Chapter 791, Texas Government Code (Interlocal Cooperation Act); Chapter 418, Texas Government Code (Texas Disaster Act of 1975); Chapter 421, Texas Government Code (Homeland Security); and Chapter 362, Local Government Code, the Chief shall obtain prior written approval from the Board for aid agreements, approval of which shall not be unreasonably withheld, provided that:

- A. The Department maintains written mutual aid agreements with the City of Granite Shoals and the EMS Transport Provider. All Automatic Aid agreements shall be in writing;
- B. Such services are consistent with federal, state, and local laws, regulations, and policies;
- C. The Department's methods of providing such services do not detract from its ability to meet its contractual obligations to the District;
- D. No Equipment, personnel, or resources will be utilized to provide Emergency Services outside the Service Area except as authorized through this Agreement and as specifically approved by the Chief; and
- E. The Department takes express measures, to the satisfaction of the District in the District's sole discretion, to ensure that the District is not exposed to any risks or liabilities, whether legal, insurance (including workers' compensation) or otherwise, in connection with the Department's performance of such work outside the Service Area.

#### **Section 3.04 Independent Contractor**

A. Notwithstanding anything in this Agreement that may be construed to the contrary, Department and all of its personnel (paid and volunteers), including all members of Department, contract emergency service providers, and volunteers and agents are at all times independent contractors and not employees of District. Department and its personnel will at all times have the right to supervise, manage, control, and direct the details and performance of the work in providing Emergency Services under this Agreement and exercise their independent, professional and discretionary judgment. If any compensation is paid to any person, Department will be liable for the payment of all taxes (including income, social security, withholding and unemployment taxes (state and federal), and shall provide worker's compensation insurance for all of Department's personnel.

B. Nothing in this Agreement shall be construed to make either Party the partner or joint venture of or with the other Party.

#### **Section 3.05 Emergency Services Billing**

A. Under Sections 775.040 and 775.041 of the H&S Code, the District has the authority to bill for and enforce collections from individuals or entities, including private insurance carriers, in payment for Emergency Services, collectively referred to as "Emergency Services billing revenue."



B. Should the District implement Emergency Services billing, the Department shall complete the appropriate forms with the company chosen by the District to obtain Emergency Services billing revenue. These forms must be submitted in a timely manner for reimbursement from the Emergency Services billing company. The Department will not submit information to the Emergency Services billing company for incidents involving a fatality.

C. Any funds received by Department from private insurance carriers in payment for Emergency Services provided under this Agreement shall be paid by the Department to the District not later than 45 days following the Department's receipt of such revenue. At the District's discretion, funds received may be used for future Department needs.

### **Section 3.06 Planning**

In conjunction with the District, the Department shall develop a one-, three-, and five-year plan for improvement of Emergency Services and delineating anticipated future Equipment and personnel needs within the Service Area ("1-3-5-Year Plan"). The 1-3-5-Year Plan shall be reviewed and updated annually by March 1 and presented to the Board for approval no later than June 1 of each fiscal year. The Department's President, Treasurer and Chief must be involved in all planning review and revisions related to the 1-3-5-Year Plan

## **ARTICLE IV. INSURANCE AND INDEMNIFICATION**

### **Section 4.01 Insurance**

A. The District shall insure or cause to be insured all the District's Equipment reasonably required to provide the Emergency Services under this Agreement against loss or damage of such kind usually insured against by similarly situated entities.

B. The Department shall insure or cause to be insured all the Department's Equipment reasonably required to provide the Emergency Services under this Agreement against loss or damage of such kind usually insured against by similarly situated entities.

C. At all times during the term of this Agreement and following the expiration of any policy currently held by the Department, the Department shall maintain the following policies of insurance in the following respective limits:

- 1) Workers Compensation for all personnel, both paid and volunteer;
- 2) Commercial General Liability Insurance providing a limit of not less than \$1,000,000 per occurrence and a \$3,000,000 annual aggregate;
- 3) Commercial Auto Liability Insurance providing a limit of not less than \$1,000,000 per occurrence;
- 4) Management Liability (Errors and Omissions) providing not less than a \$1,000,000 per occurrence and \$3,000,000 annual aggregate;

- 5) Damage insurance for any property purchased with District funds for agreed value;
- 6) Damage insurance for any property purchased solely with Department funds for agreed value;
- 7) Crime coverage in an amount not less than the amount paid by the District to the Department annually; and
- 8) The Department's policies, other than the Workers' Compensation Insurance policy, shall name the District as an additional named insured.

D. **"No Representation of Coverage Adequacy"** - By requiring insurance herein, the District does not represent that coverage and limits will be adequate to protect the Department.

E. The Treasurer of the Department Board of Directors shall be bonded in the amount of One Hundred Thousand Dollars (\$100,000.00) and the Department shall maintain Crime Coverage in an amount not less than the amount paid by the District to the Department annually. The Department is responsible for maintaining this bond. The Department shall provide a certificate to the District showing the in-force bond.

F. The District shall maintain any renewals, cancellations, revisions and replacements of the insurance policies listed in Section 4.01 A, above.

G. The Department shall maintain any renewals, cancellations, revisions and replacements of the insurance policies listed in Section 4.01 B and C, above.

**Section 4.02 Indemnification**

**TO THE EXTENT PERMITTED BY THE CONSTITUTION AND LAWS OF THE STATE OF TEXAS, DEPARTMENT SHALL DEFEND AND HOLD HARMLESS DISTRICT AND ITS OFFICERS, MEMBERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "INDEMNIFIED PARTIES"), FROM AND AGAINST ALL COSTS, EXPENSES (INCLUDING, BUT NOT LIMITED TO, REASONABLE ATTORNEYS' FEES, EXPENSES OF INVESTIGATION AND LITIGATION, COURT COSTS, AND AMOUNTS PAID IN SETTLEMENT AND AMOUNTS PAID IN DISCHARGE OF JUDGMENTS), LIABILITIES, DAMAGES, CLAIMS, SUITS, JUDGMENTS, ACTIONS, AND CAUSES OF ACTIONS WHATSOEVER (COLLECTIVELY, "CLAIMS") DIRECTLY OR INDIRECTLY RESULTING FROM OR ARISING FROM THE PERFORMANCE OR THE PROVISION OF DEPARTMENT SERVICES UNDER THIS AGREEMENT, TO THE EXTENT ARISING OUT OF ANY NEGLIGENT ACT OR**

**OMISSION OR WILLFUL MISCONDUCT OF DEPARTMENT, OR ITS AGENTS, EMPLOYEES OR CONTRACTORS. DISTRICT IS NOT RESPONSIBLE FOR THE ACTS OR OMISSIONS OF DEPARTMENT EMPLOYEES OR PERSONNEL. IT IS EXPRESSLY UNDERSTOOD THAT DISTRICT DOES NOT WAIVE AND WILL NOT BE DEEMED TO WAIVE, ANY IMMUNITY OR DEFENSE THAT WOULD OTHERWISE BE AVAILABLE AT LAW OR IN EQUITY. THE PROVISIONS OF THIS SECTION SURVIVES THE EXPIRATION OR EARLY TERMINATION OF THIS AGREEMENT. NEITHER PARTY WILL BE RESPONSIBLE FOR CLAIMS ARISING OUT OF THE SOLE NEGLIGENCE OF THE OTHER PARTY.**

**ARTICLE V.**  
**BUDGET; PAYMENTS BY DISTRICT; COMPETITIVE BIDDING; AND TITLE TO AND OWNERSHIP OF ASSETS**

**Section 5.01 Preparation of Budget**

A. Each year during the term of this Agreement, the Department shall submit to the Board a proposed, written annual budget to be reviewed by the Board. The proposed annual budget is due on June 1 of each year that this Agreement is in place.

B. The proposed annual budget shall include all operation, maintenance and capital expenses proposed by the Department with a line-item detail for each of the budget entries.

C. Upon submission to the Board by the Department, the Board has the right to approve, modify or reject in whole or in part the Department's proposed budget. Any portion of the Department's budget that is rejected or requested to be modified by the Board shall be modified and re-submitted by the Department for consideration by the Board before approval.

D. The portions of the Department's proposed annual budget that are approved by the Board will become the Department's Operating Budget for the fiscal year addressed by the budget.

**Section 5.02 Payments to Department**

A. The payments to the Department for the term of this Agreement shall be made as cost reimbursements paid to the Department on a monthly basis beginning in January 2024 with supporting justification for each reimbursement submitted by the Department to comply with the approved budget and other obligations of this Agreement. The Department shall submit documentation of items for reimbursement and the District shall make a true-up reimbursement for approved reimbursable expenses incurred October 1, 2023, through December 31, 2023, in January 2024.

B. For the term October 1, 2023, through September 30, 2024, the District will pay to the Department an amount not to exceed the sum of THREE HUNDRED ELEVEN THOUSAND

FIVE HUNDRED AND 00/100 DOLLARS (\$311,500.00), as approved and appropriated by the District from the District's tax revenues, for the provision of Emergency Services.

C. Notwithstanding any other provisions in this Agreement, the District is not obligated to make any payment to Department, except in accordance with the Department's Operating Budget, as approved by the Board.

D. The Department shall prepare a financial report each month setting forth the Department's revenues from all sources, including District funding, and all the Department's expenditures. The District shall make payments to the Department from current revenues on hand in accordance with the approved Operating Budget for the Department for the current fiscal year.

E. The Department shall maintain a separate account for the funds received from the District and for the funds received from other funding sources (such as Department donated or fundraising event funds) so that District can account for how, when, and where all the funds received from the District are expended. Department may not comingle District funds with other Department funds.

F. As unexpected or emergency expenditures arise, the Department may submit a proposal itemizing those additional expenses for the Board's review and action. All requests by the Department for additional funds shall be in writing, stating the unexpected or emergency event. The Board may, but is not obligated to, approve or fund unexpected or emergency expenditures.

G. The Department's Operating Budget shall be automatically modified and amended if the funds actually received by the District are less than expected or budgeted by the District, or if the District is unable to provide all the funds in accordance with this Agreement. Any adjustment of Department's Operating Budget and related adjustment of services provided made pursuant to this paragraph shall not in and of itself be the basis for a breach of Agreement claim against the District or the Department.

H. All payments by District will be from current fiscal year operating funds, and the District has no obligation to issue debt or borrow funds to pay for any Emergency Services contemplated by this Agreement.

I. No funds provided by the District may be used by the Department for legal representation, costs, or expenses of any kind or nature whatsoever of the Department for issues or disputes related to or arising from this Agreement or otherwise, without the previous written agreement of the District.

J. Any District funds appropriated to the Department by the District for any Operating Budget that are not expended at the end of the budget period shall be returned in full to the District within 30 days of the end of that budget period for appropriation in the next Operating Budget cycle.

K. If the Department is not in compliance with the requirements of the District or this Agreement, the Department shall forfeit any payments due to it hereunder, as determined by the District.

**Section 5.03 Competitive Bidding**

A. For any expenditure exceeding \$50,000.00 (any portion of which involves funds appropriated by the District) for any one item or service, or for more than one of the same or a similar type of items or services in a calendar year, and upon authorization by the Board, the Department shall request competitive bids on behalf of the District on such items to be purchased or leased or services to be performed. The Department shall comply with all state laws applicable to competitive bidding by an emergency services district, particularly Section 775.084 of the H&S Code.

B. The Department may not prepare restrictive bid specifications.

C. The Department may use cooperative buying agreements approved by the Board for the acquisition of Equipment.

D. The District shall have the sole authority to award or reject any bids, and the District may reject any and all bids.

**Section 5.04 Acquisition, Title to, and Ownership of Assets**

A. The District and the Department agree that title to and ownership of any assets owned by the Department as of October 1, 2023, shall remain that of the Department.

B. The Parties agree that all Equipment purchased by the District and/or with District funds, in whole or in part, for use in the provision of the Emergency Services to the Service Area, shall be acquired in the name of the District. The District agrees to make such Equipment fully available to, and to place such Equipment in the possession of, the Department, to be used by the Department in accordance with this Agreement and the protocols adopted by the Department from time to time. Records, receipts and titles of all Equipment purchased using District funds shall be kept in the District's office.

C. If the District provides less than 100% of the funds required to purchase or lease any Equipment, the District's ownership in that Equipment shall be equal to the proportionate share of the funds provided.

D. The Department may not sell, trade, assign or convey to another person or entity any asset purchased in whole or in part with District funds without prior approval of the Board.

E. The Department may not acquire any asset using District funds without the prior approval of the Board.

**ARTICLE VI.**  
**REPORTS**

**Section 6.01 Annual Report**

A. The Department shall provide to the Board annually, in the month of October, a written report setting forth the following:

- 1) the year-to-date totals of the number and nature of Emergency Services calls originating from all stations within the Service Area; and
- 2) the current roster of personnel, including certifications held and position within the Department.

B. The report shall cover the period from October 1 through September 30 of the prior fiscal year.

C. The Department's failure to provide the annual report as outlined in this Agreement is a material breach of this Agreement.

D. The Chief, or the Chief's designee, will present the Department's annual report to the Board.

### **Section 6.02** Monthly Reporting

A. The Department shall deliver a monthly written report to the Board by the first day of each month, in a form reasonably acceptable to and approved by the Board, setting forth the following:

- 1) the number and nature of Emergency Services calls for the prior month (i.e. a run report), including information regarding all automatic and mutual aid responses received from and provided to third parties;
- 2) the number and types of calls to which the Department did not respond and for which third-party automatic or mutual aid was requested;
- 3) the current status of all Equipment (regardless of ownership), and a list of all out-of-service Equipment;
- 4) a monthly report of all Department financial activity, including an up-to-date balance sheet, profit and loss statement, and detailed report of any Emergency Services billing revenue, billings and receivables for the prior month;
- 5) a list of, and signed certification of timely submission for, all required regulatory/agency reports filed in the prior month;
- 6) a roster of all the Department's personnel (whether paid or volunteer), additionally noting whether each individual on the roster is active or inactive, the respective State Certifications held by the personnel; and
- 7) a monthly report detailing the information required in Sections 3.02 E, 3.02 F and 3.02 G above, including State Certifications and a description of all personnel training by course subject or title.

B. The Department shall provide a report to the Board regarding the Department's fundraising, if any. The report shall include all fundraising efforts, the times and dates of such efforts, and the amount of money collected as a result of each individual fundraising effort.

C. The Department's failure to provide the monthly reports to the Board as outlined in this Agreement shall constitute a material breach of this Agreement.

### **Section 6.03 Inventory**

A. The Department shall provide an annual written inventory of all Equipment to the District on or before the District's June meeting. This inventory report should capture all assets valued at over \$1,000.00 and should designate all Equipment in which the District has an ownership interest and the percent of that interest.

B. By December 1, 2023, the Department shall provide a written inventory of all Equipment owned by the Department on October 1, 2023. This inventory report should capture all Department assets valued at or over \$1,000.00 as of October 1, 2023.

C. The Department's failure to provide the inventories required by Section 6.03 A and B is a material breach of this Agreement.

### **Section 6.04 Other Information**

The Department shall furnish or cause to be furnished to the District such reports or information concerning the Department as the District may reasonably request. Such reports may include, at the District's discretion, response times for the various calls made by the Department, calls and response times broken down by zone, and types of calls, financial records and any other information reasonably requested by the District, subject to applicable law, including but not limited to, the Texas Public Information Act, Chapter 552, Texas Government Code; the Texas Emergency Health Care Act, Chapter 773, Texas Health & Safety Code; TAC; and the Health Insurance Procurement and Portability Act. It is understood by the District and Department that the Department may not be able to provide certain information that is otherwise confidential or privileged by applicable law. However, the Department shall enter into any other agreements that may be required in order to share confidential information with the District.

### **Section 6.05 Regulatory Reports**

The Department shall comply with the reporting requirements of all local, state, and Federal regulatory entities on a timely basis. All reports shall be entered before the final day of the month the reported incident occurred. The Department's failure to comply with such reporting requirements shall be a material breach of this Agreement.

### **Section 6.06 Obligation to County Fire Marshals or Emergency Management Coordinators**

The Department shall promptly furnish reports or information concerning the Department that the Llano County Fire Marshal or Emergency Management Coordinator, if any, may

reasonably request, subject to applicable law. All requests from local, state, or federal agencies shall be referred to the District.

**ARTICLE VII.**  
**YEAR-END FINANCIAL STATEMENTS AND AUDITS**

**Section 7.01** Year-End Financial Statement

The Department shall provide the Board a fiscal year-end financial statement approved by the Department Board of Directors no later than five business days after the completion of the Department's independent audit.

**Section 7.02** Department Audit

A. The Department shall annually submit its financial records for an independent audit, including an audit opinion and audited financial statements related to the Department's records.

B. The audit shall be performed no later than 60 days after the end of the Department's fiscal year. The audit shall be conducted by an independent certified public accountant or firm of certified public accountants licensed in Texas and approved in advance by the District.

C. The District shall pay for the Department's audit if the audit expense is included in the Department's Operating Budget.

**Section 7.03** Department Financial Documents

The Department shall make all monthly financial statements and financial review documents available to the District.

**Section 7.04** Department to Correct Deficiencies

A. Any deficiencies, exceptions or concerns noted by the Board or an independent certified public accountant or firm of certified public accountants undertaking the Department's audit shall be described in writing and provided to the Department. The Department shall, beginning on the next business day, take action to correct any issues related to financial deficiencies, exceptions, or auditor's notes, and provide documentation of this effort to the District.

B. The Department's failure to take action to correct issues related to financial deficiencies, exceptions or auditor's notes within 60 days after notice of same shall be a material breach of this Agreement.

**ARTICLE VIII.**  
**ASSIGNMENT AND MODIFICATION**

This Agreement may not be assigned by the Department, in whole or in part, without the prior written consent of the District. Further, this Agreement may be modified only with the prior



written consent of all parties. Any modifications to this Agreement must be in writing and signed by both the District and the Department.

**ARTICLE IX.**  
**TERM; TERMINATION; MISCELLANEOUS**

**Section 9.01** Term of Agreement

This Agreement shall be for the initial period of October 1, 2023, through September 30, 2024. Thereafter, this Agreement may renew for successive one-year terms by mutual written agreement of the Parties.

**Section 9.02** Termination of Agreement

A. This Agreement may be terminated by either party hereto without cause upon providing at least 90 days' prior written notice. The date of the postmark on the termination letter shall begin the notice period.

B. This Agreement may be terminated by the District with seven days' written notice in the event of a material breach by the Department. The date of the postmark on the termination letter shall begin the notice period.

C. All termination notices shall be sent by US certified mail, return receipt requested, and shall be sent to the address for the non-terminating party listed in this Agreement.

**Section 9.03** Treatment of Assets Upon Termination of Agreement or Dissolution of Entity

A. Termination - Upon termination of this Agreement, title to all property and assets owned by the Department prior to October 1, 2023, shall remain with the Department. All Equipment and other assets purchased wholly with District funds shall automatically and within 24 hours of termination, be conveyed and transferred to the District. All budgeted funds provided by the District to the Department and then in Department bank or investment accounts at termination shall be returned to the District within 24 hours of termination. All Equipment and other assets purchased in part with District funds shall be liquidated and the District shall be reimbursed for its proportionate share in the purchase of that Equipment or other asset.

B. Dissolution - Upon dissolution of the Department, all Equipment and other assets purchased wholly with District funds shall automatically and, within 24 hours of dissolution, be transferred to the District. All budgeted funds provided by the District to the Department and then in Department bank or investment accounts at dissolution shall, within 24 hours of dissolution, be returned to the District. All Equipment and other assets purchased in part with District funds shall be liquidated at fair market value, and sale proceeds will be distributed to the District and the Department according to the party's percentage of contribution. The District shall have the right of first refusal to purchase the Department's interest in any Equipment or assets for which the District and the Department both participated financially in the purchase. All assets and property owned wholly by the Department prior to October 1, 2023, shall be transferred as required by Chapter 22 of the Texas Business Organizations Code.

C. The Department will amend its by-laws to ensure compliance with this section within 90 days of the Department's signing this Agreement.

**Section 9.04** Notices

All notices, certificates or other communications hereunder shall be sufficiently given or shall be deemed given when postmarked, and mailed by US certified mail, return receipt requested, and addressed as follows:

If to District, at:       President  
                                  Llano County Emergency Services District No. 5  
                                  P.O. Box 1490  
                                  Kingsland, Texas 78639

With a copy to:       Kelli Carlton  
                                  The Carlton Law Firm, P.L.L.C.  
                                  4301 Westbank Drive, Suite B-130  
                                  Austin, Texas 78746  
                                  Facsimile: (512) 900-2855

If to Department, at:  President, Board of Directors  
                                  Sunrise Beach Volunteer Fire Department  
                                  124 Sunrise Drive, Drawer F  
                                  Sunrise Beach, Texas 78643

The District or Department may, by notice and in writing, designate any further or different address to which subsequent notices, certificates or other communications shall be sent.

**Section 9.05** Binding Effect

This Agreement shall inure to the benefit of and shall be binding upon the District and Department.

**Section 9.06** Severability

In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**Section 9.07** Execution and Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 9.08** Captions

The captions or headings in this Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of any provision or section of this Agreement.

**Section 9.09** Attorney's Fees

In an action to enforce any provision of this Agreement, the prevailing party may recover its attorney's fees, costs and expenses from the non-prevailing party. This section shall survive the termination of this Agreement.

**Section 9.10** Legal Representation

The District's legal representation is by and through The Carlton Law Firm, P.L.L.C. The Carlton Law Firm does not represent the Department, and the Department hereby acknowledges this fact. The District recommends that the Department have an attorney review this Agreement prior to signing.

**Section 9.11** Governing Law

The validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Texas.

**Section 9.12** Venue

This Agreement is fully performable and enforceable in Llano County, Texas. Venue shall lie in Llano County, Texas.

*[remainder of page intentionally blank]*

**IN WITNESS WHEREOF**, the District and Department execute this Agreement in their respective names and attest by the duly authorized officers.

Signed this \_\_\_\_\_ day of September, 2023.

**LLANO COUNTY EMERGENCY SERVICES DISTRICT NO. 5**

ATTEST:

By: \_\_\_\_\_  
Karl Wolfe, President  
Board of Commissioners

By: \_\_\_\_\_  
Andrew Spencer, Secretary  
Board of Commissioners

**SUNRISE BEACH VOLUNTEER FIRE DEPARTMENT**

ATTEST:

By: \_\_\_\_\_  
Don Black, President  
Board of Directors

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

# EXHIBIT A

## DISTRICT AND DEPARTMENT SERVICE AREA MAP

